

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6

JEANNE HICKS, CLERK

HON. THOMAS B. LINDBERG

By: Heather Smith, Deputy Clerk

CASE NO. P1300CR20081339

DATE: April 7, 2010

FILED
DATE: 04/07/10
9:02 O'Clock A.M.
JEANNE HICKS, CLERK
BY: HEATHER SMITH
Deputy

TITLE:

STATE OF ARIZONA
(Plaintiff)

vs.

STEVEN CARROLL DEMOCKER
(D-1)

COUNSEL:

Yavapai County Attorney (e)
(For Plaintiff)

John Sears (e)

Larry Hammond & Anne Chapman (e)
OSBORN MALEDON, P.A.
(For Defendant)

HEARING ON:
Pending Motions

NATURE OF PROCEEDINGS

COURT REPORTER
Roxanne Tarn

START TIME: 9:02 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Jeff Paupore, Deputy County Attorney
Michael Sechez, Investigator
Steven DeMocker, Defendant in custody
John Sears, Counsel for Defendant
Larry Hammond, Counsel for Defendant
Anne Chapman, Counsel for Defendant
Rich Robertson, Investigator

The first issue the Court would like to address is the issue with Alexander Napp and his mother.

Counsel for State indicates, he filed a motion to allow Alexander Napp to testify by closed circuit hook up.

Anne Margaret Saxaroot is sworn and testifies.

Witness is excused.

Counsel for State believes it would be appropriate to have the minor testify via closed circuit hook up.

Counsel for Defendant, Sears, believes depositions shall occur with the minor and the minors mother.

Court takes a brief recess to allow Counsel for State to confer with the minors mothers.

~*~*~*~*~* Recess – 9:23 a.m. ~*~*~*~*~*

At 9:32 a.m., Court reconvenes with all parties present.

Counsel for State spoke with Anne Margaret Saxaroot, mother of minor child, and her preference is that the minor be required to testify only 1 time in Judges chambers. She does not wish to submit to a Defense interview or deposition.

Parties discuss A.R.S. 13-4253 (a) and (b).

Counsel for Defendant, Sears, again requests he be allowed to interview the mother and the minor child prior to an order allowing the testimony by closed circuit. Counsel requests the matter be taken under advisement pending an interview or deposition.

The motion for out of Court testimony filed April 1, 2010 by Counsel for State is taken under advisement. (AE)

Court authorizes Counsel for Defendant to have a deposition with both Mrs. Saxaroot and the minor child Alexander Napp.

Counsel for State requests he be allowed to video tape the deposition with the minor child. Court authorizes Counsel to video tape the deposition.

As to potential juror Smith who spoke about the circumstances of the case during/after completing the questionnaire, Court cannot be sure the Juror will be present today as she was going to be on a vacation this week.

Court issues an order directing Juror Smith to be present on April 13, 2010.

Counsel for Defendant, Sears, addresses the continuing of the Jury Selection Process. Counsel are currently reviewing the jury questionnaires. Counsel for Defendant has compiled a list of prospective jurors they believe should be dismissed based upon the responses in the questionnaires.

Counsel is also working on a list of prospective jurors they believe did not answer the questionnaires fully to allow Counsel to fully consider those people.

Counsel further believes a smaller group would be appropriate for *voir dire*.

Counsel suggests all Counsel in this matter discuss the lists created by Counsel for Defendant to try to cut down the list of prospective jurors which will be present for the Jury Selection. Counsel further suggests *voir dire* not be conducted in the normal fashion, rather; it be conducted in smaller groups.

Counsel for State, Butner, responds. He believes the suggestion by Counsel for Defendant is not appropriate and should not be followed. Counsel requests this matter be conducted as it has been anticipated.

Counsel for Defendant, Sears, replies.

Court sees no legal obstacle to conducting a semi recall. Court believes Counsel for State should have time to consider Counsel for Defendant's suggestions. Counsel for Defendant shall provide a copy of emails sent to Joseph Butner to Jeff Paupore as well based upon the State's request.

Counsel for Defendant, Sears, addresses the Court as to the layout of the Division 6 Courtroom. Counsel requests this Court inquire of Judge Brutinel if this matter can be tried in the Division 2 Courtroom.

Counsel for State believes that would not be a good idea based upon the acoustics in the Courtroom.

Counsel for Defendant, Sears, requests Counsel for State provide a copy of criminal histories as to the prospective jurors to Defense if they choose to run criminal histories.

Counsel for State will provide Counsel with a copy of any prior felony convictions as to the prospective jurors if they decide to run the criminal histories as well as jury cards.

Counsel for Defendant, Sears, addresses the ongoing video experiment as to speaking with the Defendant while he is in custody. Counsel has been running into different issues when he tries to communicate with the Defendant.

Counsel for State requests leave of the Court to inquire with the Yavapai County Jail.

Counsel for State to do what he can as to the communication problem.

Counsel for Defendant, Hammond, addresses the Court as to the issue of the Sorenson testing. Counsel has yet to receive the report.

Counsel for State will provide a copy of the report when it is received. Testing is ongoing.

Court directs Counsel for State to contact somebody and determine how the testing is going at this time. Counsel will contact the lab during lunch and will update Court and Counsel after the lunch hour.

Counsel for State addresses the audit information and the STR tables. Both of which Counsel for State has disclosed to Counsel for Defendant.

Counsel for Defendant, Hammond, believes some sanctions would be appropriate based upon the late disclosure of the audit information and the STR tables.

Defense filed a motion on March 22, 2010 to compel an interview of Ruth Kennedy.

Court takes a brief recess.

~*~*~*~*~ Recess – 10:44 a.m. ~*~*~*~*~

At 10:59 a.m., Court reconvenes with all parties present.

Counsel for Defendant, Hammond, addresses the Court as to the issue of interviewing Ruth Kennedy.

Counsel for Defendant, Hammond, believes the Defense has a right to interview the victim Ruth Kennedy and requests he be allowed to do so.

Counsel for State, Butner, believes based upon the statutes pertaining to victims' rights and the victim status of Ruth Kennedy, the Defense has no right to interview Ruth Kennedy.

The Court Does Not Find Defendant's rights under the 6th amendment are any less preserved by the passage of the Arizona constitutional provisions having to do with victims' rights. **The Court Does Not Find** it is appropriate to order the compelled interview of Ruth Kennedy. The request to order Ruth Kennedy to submit to an interview is **DENIED**.

Counsel for Defendant, Sears, addresses the March 10, 2010 Motion to Compel the State to make a proper proffer for witnesses.

Counsel for Defendant requests the Court allow one last opportunity for Counsel for State to make a proper proffer as to the potential witnesses as stated on the record and supply an updated witnesses list.

Counsel for State, Butner, responds.

Counsel for Defendant, Sears, replies.

IT IS ORDERED both Counsel for State and Counsel for Defendant shall provide the Court and opposing Counsel with a list of witnesses who will actually be called at trial and what portion of the trial they will be testifying. The list shall be filed by Monday at 9:00 a.m.

Counsel for Defendant, Sears, requests the Court preclude certain witnesses which may be offered by Counsel for State.

The Court Does Not Find the requirement of a proffer being provided by rule 15.7 and to the extent the witnesses have been listed in the past, I would not find that to be a requirement of the disclosure rules however, court ordered the parties provide the court and each other with the materials as identified.

~*~*~*~*~ Recess – 11:53 a.m. ~*~*~*~*~

At 1:35 p.m., Court reconvenes with all parties present.

Court notes, Jack Fields, Deputy County Attorney, is now present.

Court notes, it issued another order directing prospective juror Smith to appear Tuesday April 13, 2010 at 1:15 p.m.

Jack Fields addresses the Court as to the contact with Counsel and his client while he is in custody. Jack Fields will make every effort to fix whatever the problem may be.

Counsel for Defendant, Chapman, addresses the Court as to pending motions to preclude witnesses and evidence.

Counsel for State, Butner, responds.

Counsel for Defendant, Chapman, replies.

~*~*~*~*~ Recess – 3:07 p.m. ~*~*~*~*~

At 3:28 p.m., Court reconvenes with all parties present.

Court received a call from the Clerk's office wanting to know whether or not there is a deadline for the filing of exhibits with the Clerk. The State shall identify which exhibits from prior hearings will be used during trial and shall submit all paper exhibits by April 19, 2010 and Defense shall identify which exhibits from prior hearings will be used during trial and shall submit all paper exhibits by April 26, 2010.

Counsel for Defendant has requested a place in the Courthouse which would allow Counsel to leave there belongings here during the trial proceedings.

Court suggests Counsel speak with Court Administration about a storage room.

Counsel discuss the Fenra issue.

Court will consider the March 10, 2010 motion filed by Defendant, States response file March 22, 2010 and the State's reply and those issues are reserved for a possible post verdict hearing if it is needed.

Parties further argue pending Motions to Preclude/Request for Sanctions.

Counsel for Defendant, Chapman addresses the Court as to the motion to dismiss the death penalty and Rule 15.7.

Counsel for State replies.

Court reviews Rule 15.7 and addresses the parties as to whether or not they believe preclusion or sanctions are appropriate in this matter.

Court addresses the issue as to the death penalty.

Court will consider the death penalty issue over night and will address it further tomorrow.

IT IS ORDERED denying the motion.

Court addresses a combination of documents including a Petition for Use Immunity in regards to Renee Girard filed by John Napper.

Parties will anticipate dealing with that motion tomorrow afternoon, if John Napper is available.

Counsel spoke with the forensic lab director, Dan Helwig, and informs Court and Counsel of the update as to the lab testing.

Court goes off the record to attempt to contact John Napper.

Court directs all parties to be present at 1:30 p.m. tomorrow.

END TIME: 5:08 p.m.

cc: VS (e)
Dean Trebesch (Contract Administrator) (PD) (e)
Christopher DuPont, Trautman DuPont PLC, 245 W Roosevelt, Ste. A Phoenix, AZ 85003,
Counsel for Victims Charlotte and Katherine DeMocker